111-264

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~1067.~~ 24

JAMES W. LOVELL AND PRISCILLA D. LOVELL, APPELLANTS,

vs.

THE SAINT LOUIS MUTUAL LIFE INSURANCE COMPANY, THE SAINT LOUIS LIFE INSURANCE COMPANY, AND WILLIAM MORROW, TREASURER OF THE STATE OF TENNESSEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED NOVEMBER 12, 1879.

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1 *Caption.*

MIDDLE DISTRICT OF TENNESSEE:

At a circuit court of the United States begun and held at the Federal court-room in the city of Nashville, within and for the district aforesaid, on the third Monday, being the 21st day, of October, A. D. 1878, and of the Independance of the United States the 103rd year—present, the Hon. John Baxter and the Hon. Connally F. Trigg, judges—the following proceedings were had, to wit:

On Aug. 14, 1876, a transcript from the chancery court at Nashville, Tennessee, was filed in words and figures following, to wit:

JAMES W. LOVELL ET AL.
vs.
THE ST. LOUIS MUTUAL LIFE INSURANCE COMpany et al.

STATE OF TENNESSEE,
Davidson County:

In chancery at Nashville.

At the April term, 1876, of the chancery court at Nashville the following proceedings were had in the case wherein James W. Lovell and wife are complainants, and the St. Louis Mutual Life Insurance Com-
2 **pany and others are defendants.**

***Original bill.—Filed July* 3, 1875.**

To the Hon. W. F. Cooper, chancellor, &c., presiding in the chancery court of Davidson County:

The bill of complaint of James W. Lovell and his wife, Priscilla D. Lovell, who are citizens of Smith County, Tennessee, against The St. Louis Mutual Life Insurance Company, which is a company incorporated by the legislature or under the authority of the legislature of the State of Missouri, and which had its chief place of business in the city of St. Louis, in that State, and also against The St. Louis Life Insurance Company, also incorporated by the legislature of Missouri or by its authority, both of which companies having their chief place of business at St. Louis, and being residents of the State of Missouri; also, against William Morrow, treasurer of the State of Tennessee, and residing in Davidson County.

Complainant James W. Lovell would respectively represent and show your honor that the St. Louis Mutual Life Insurance Company is
3 a company which was incorporated by law in the State of Missouri, and had its chief place of business at St. Louis, as stated in the caption, and that thereafter (as he is informed and believes) it sold its name, assets, and good-will to the Mound City Life Insurance Company, which thereupon (as he is informed and believes) assumed and took the name of the St. Louis Life Insurance Company, and is now an incorporated company.

The St. Louis Mutual Life Insurance Company had an agency in Nashville in April and May, 1868, under the management at that time

of one Saurie, upon whose representations complainant Jas. W. was induced to take a policy upon his own life for the use of his wife, the said co-complainant, Priscilla D. This policy he herewith files, and makes it a part of this bill as an exhibit to the same, which is marked Exhibit A to this bill. It purports to have been signed by the president of the St. Louis Mutual Life Insurance Company on the 24th day of April, 1868, and to have been countersigned by an agent on the 1 May, 1868. This policy sets forth the following terms: That in
4 consideration of an annual premium of one hundred and sixty-two dollars and 14 cents to them paid by the complainant Jas. W. on or before the 24th day of April in each and every year from and after the date of and during the continuance of the policy, the said company assured the life of complainant Jas. W. for the sole use of complainant Priscilla D. in the amount of $5,000.00 for the term of the whole continuance of the natural life of said James W. Lovell, and the said annual payments were to be made in the following manner: An annual premium note of $53, and a semi-annual cash premium of fifty-four dollars and $\frac{57}{100}$ on the 24th day of April and October (the first one of said notes and the first semi-annual cash premium commencing with the date of this policy), and the company obligates itself to and with complainant, Priscilla D., her executors, administrators, and assigns, well and truly to pay, or cause to be paid, at the city of St. Louis, the said sum insured to the complainant, Priscilla D., her executors, administrators, and assigns, for the sole use of the said Priscilla D., with-
5 in ninety days after due notice and proof of the death of the said Jas. W., deducting therefrom the balance of annual premium unpaid, if any, and all loans and notes taken for premium unpaid at that time.

The policy contains this further provision, that if the two annual premiums next due and payable after the date of the policy shall be well and truly paid, and default shall be made in the payment *of annual* of the annual premiums thereafter to become due and payable at the time therein mentioned and limited for the payment of the same respectively, then and in such case such default shall not work a forfeiture of the policy, but the sum of five thousand dollars shall be commuted or reduced to the sum of the annual premiums paid. Complainant Jas. W. paid promptly all premiums due from time to time under the terms and provisions of this policy till and including 24th April, 1873.

It had become notorious that the affairs of the company had got into a bad condition. Legal proceedings had been instituted against it
6 at St. Louis, and perhaps other places, charging fraud and mismanagement, and placing it under injunctions by which it was greatly embarrassed and positively restrained, as compl'ts understood, in the exercise of its functions, and among others from issuing any more original policies or taking any more risks.

Down to (& including) this time complainant had paid all the semi-annual premiums promptly as they fell due, and annually note was regularly taken up a renewal note given, giving, as compl't was informed, the benefit of his dividends, which he was informed were placed to his credit in casting up (the interest) and determining the amount of the renewal note to be given; all of which he left to the honor and good faith of the company, and they may or not have acted fairly in the matter. He only knows that the whole affair was a complicated piece of financial machinery which seemed to move and carry on its operations in a way that was to him very obscure. He never rec'd any

dividends at any time in money, and if he ever got the benefit of any, it was as he supposed in the deductions and in the execution
7 of the annual renewal note. The last renewal note was executed on the 24th day of April, 1873, due at twelve months, as well as he now recollects, and closing up all questions of interest.

The note is still outstanding, and the explanation is this: At the time complainant Jas. W. made his last semi-annual payment, on 24th April, 1873, as above stated, or soon thereafter, he made known to the agent, one Foote, at Louisville, Ky., his desire to receive what he was informed by the said agent of the company he had a right to receive, and that was a paid-up policy. By this time the company had ceased to have an agent at Nashville, Tennessee.

Complainant was assured that all the money he had paid in the way of premiums would be duly credited to him, and that he could have a paid-up policy for such an amount as that much money under the regulations of the company would entitle him to if he had paid it all at once and demanded a paid-up policy without more. The amount of his outstanding note was of course to be deducted. The amount which he paid was eight hundred and twenty-two dollars, less the amount
8 of the outstanding note, as well as he now recollects. Compl't thinks that his last semi-annual payment of $58 should be added to the am't.

The agent suggested to him that he had better wait and make another semi annual payment so as to commute another year from the date of the policy, otherwise he would have (?) the last semi-annual payment already made. This compl't told him he would loose rather than defer the matter as suggested. S› with the understanding that he was to get a paid-up policy upon the surrender of the old one, he gave his said policy into the hands of the said agent (at Louisville) to be carried to St. Louis and there delivered up, and a paid-up policy issued and sent to him in its stead. Complainant was at that time engaged in the business of steamboating, having an interest in several steamboats and being in command and control of one in person, and he was seldom at home in Smith County, where his family reside, and he supposed that the matter of the life policy was now fixed and no longer required his particular attention, and he was only awaiting to
9 receive his paid-up policy & outstanding premium note. While matters were in this condition he was surprised to receive a demand through the post-office from the agent of the company at Louisville for the interest on the outstanding note. Some time after receiving this demand he went to his home in Smith County, and there, for the first time, found that instead of a paid-up policy, the original policy had been returned with an endorsement on the margin in the words and figures following:

In default payment of renewal premiums due 24th October, 1873, this policy is commuted and reduced to eight hundred and twenty-two dollars, on condition that the interest on outstanding premium notes is paid annually in advance.

MA. CAMPBELL, *Assignee.*

Complainant, upon receiving this returned policy thus endorsed, soon thereafter went to Louisville, Ky., and there protested against the course the company were pursuing with him, and insisted that he was to have received a paid-up policy, and of course that the outstanding note would be taken up and cancelled in that transaction, and told him
10 that he did not think that he was to pay either the note or in-

terest on it. But the agent coolly informed complainant that since the agreement made with him for a paid-up policy, the St. Louis Mutual Life Insurance Company had sold to the Mound City Life Insurance Company, and that such a thing as issuing to him a paid-up policy, or even restoring or reinstating his policy, was a thing wholly outside the contract with the Mound City Life Insurance Company, and that the policy was now forfeited.

Complainant proposed to pay the outstanding note and interest on it if the policy were reinstated, but the reply was that such a thing was outside the agreement with the Mound City Life Insurance Company, and could not be done.

And complainant charges that after he was, as before stated, promised a paid-up policy, and had sent on his original policy to be surrendered in exchange, that, without his knowledge or consent, the St. Louis Mutual Life Insurance Company sold and transferred its entire assets, name, good will, &c., to the Mound City Life Insurance Company, and this occurred before the interest on the outstanding had fallen
11 due and before the said demand for the said interest was made, as aforesaid.

Complainant will therefore insist, under the facts and circumstances of this case, that he has been guilty of no default that can, or ought in law and justice, work a forfeiture of said policy.

He will insist that all the money paid by him shall be refunded with interest, and his outstanding note delivered up to be cancelled, or that if it can be done in any way to be made available and subserve the real objects and purposes had in view in taking the policy originally, that the same be reinstated.

But complainants do not ask this under the circumstances, unless some benefit is to be derived from it, and if the St. Louis Mutual Life Insurance Company have divested themselves of all their assets by their agreement with the Mound City Life Insurance Company, it is difficult to perceive that a restoration of the policy would inure to the benefit of Priscilla D. when the death of compl't Jas. W. shall take place.

Complainants were not parties to any contract between said companies, and are not bound by the same. While the St. Louis Mutual
12 Life Insurance Company declared dividends to policy-holders, the St. Louis Life Ins. Co., compl'ts, is informed no such feature. Compl't cannot now undertake to be positive as to the amount of the outstanding note for annual premium, now in the hands of the company. He thinks that it is about $160. He will not undertake to be positive as to the date when it was given or when the last semi-annual payment was made. He believes, however, that his statement hereinbefore made on those points are about correct.

While the St. Louis Mutual Life Insurance Company or the St. Louis Life Ins. Co. (compl't does not know which one) are holding this outstanding note and refuse to deliver it up, and claim it, as well as all premiums paid, to have been forfeited, as well as the policy itself, at the same time so palpable is the fraud of these companies in producing the very state of facts and circumstances which they now coolly allege as a ground of forfeiture, that their agents can scarcely find a pretext or excuse for it. Compl't does not know that they even pretend to have produced the receipts signed by the president or secretary, men-
13 tioned in the policy. Indeed, complainant is informed that long before he ceased paying his semi-annual payments and making his annual renewal notes, it lay within the power of himself, or any other policy-holder of Tennessee, to have instituted legal proceedings

in the courts of Tennessee under our acts of assembly in such cases made and provided, and laid hold of the State bonds then and now in the hands of the State treasurer for his indemnity.

At this time there is in the hands of William Morrow, treasurer of the State of Tennesse (as compl't is informed) $20,000.00 (twenty thousand dollars) in bonds of the State of Tennessee, which he holds on deposit (as the property of said St. Louis Mutual Life Ins. Co., or St. Louis Life Ins. Co.) under the laws of Tennessee as indemnity against loss to citizens of Tennessee on life policies such as that of compl't in the present case. Neither of said companies have any agent in Tennessee, nor indeed have ever had for a considerable time.

The premises considered, complainants pray that the parties named as defendants in the caption be made such, that copy, bill and
14 process issue; let publication be made for the non-resident parties; let writs of attachment and injunction issue restraining defendant Morrow from disposing in any manner of said bonds, except under the orders of this honorable court in this cause, and let said bonds be attached in his hands, and let all suitable decrees be pronounced against defendants for the money complainant has paid as hereinbefore detailed, and ordering that his outstanding premium note be restored and delivered up to him, and let said bonds or a sufficient amount of them be sold and the proceeds applied in satisfaction of compl't's decree, and let an account be ordered to ascertain the amount of money paid by complainant. Let def't's full answers make; let answers under oath be waived.

This is the first application for writs of injunctions and attachment in this cause. Let this cause be consolidated and heard with, if proper, any other suits against the same defendants seeking similar relief.

Complainants pray for all such other and general relief as they may be entitled to in the premises.

A. McCLAIN,
Sol'r for Compl'ts.

15 STATE OF TENNESSEE,
Davidson County:

This day comes James W. Lovell, complainant in the foregoing bill, and makes oath in due form of law that the statements made in said bill as of his own knowledge are true, and those statements made on information and belief he believes to be true.

JAS. W. LOVELL.

Subscribed and sworn to before me this 1st July, 1875.
T. D. CASSETTY, *J. P.*

Fiat.

To the clerk & master of the chancery court of Davidson County:

Upon execution of bond for cost, and also a bond in the sum of $1,500, conditioned as required by law upon writs of injunction and attachment in cases like this, let this bill be filed and issue writs of injunction and attachment according to the prayer of the bill.

This 2nd July, 1875.

NATHANIEL BAXTER,
Judge, &c.

EXHIBIT A.

THE SAINT LOUIS MUTUAL LIFE INSURANCE COMPANY.

Number 10937. Age, 40. Amount, $5,000. Premium, $162.14.

16 By this policy of insurance, in consideration of an annual premium of one hundred and sixty-two dollars and fourteen cents to them paid by James W. Lovell, of Smith Co., Tenn., on or before the twenty-fourth day of April in each and every year from and after the date of and during the continuance of this policy, each of said annual premiums to be made in manner following: An annual premium note of $53, and a semi-annual cash premium of fifty-four $\frac{57}{100}$ dollars, on the 24th days of April and October (the first one of said notes and the first semi annual cash premium commencing with the date of this policy), do assure the life of James W. Lovell, of the county of Smith, State of Tennessee, for the sole use of Priscilla D. Lovell, wife of the said James W. Lovell, in the amount of five thousand dollars, for the term of the whole continuance of the natural life of said James W. Lovell. And the said company do hereby promise and agree to and with the said assured, her executors, administrators and assigns, well and truly to pay or cause to be paid, at the city of St. Louis, the said sum insured, to the said assured,

17 her executors, administrators or assigns, for the sole use of the said Priscilla D. Lovell, within ninety days after due notice and proof of the death of the said James W. Lovell, deducting therefrom the balance of annual premium unpaid, if any, and all loans and notes taken for premiums unpaid at that time, and in case of the death of the said Priscilla D. Lovell, before the decease of the said James W. Lovell, then and in such case the amount of said insurance shall be payable to the legal heirs of the said James W. Lovell for their use, or to their guardian if under age, within ninety days after due notice and the proof of the death of said James W. Lovell as aforesaid; but should said James W. Lovell die without issue surviving him, then the said insurance shall be payable to his legal representatives, or such person or persons as he may order or direct.

Provided, nevertheless, and it is hereby understood and agreed by and between the parties hereto,

1st. That if the two annual premiums next due and payable after the date hereof shall be well and truly paid, and default shall be made in

18 the payment of any of annual premiums thereafter to become due and payable at the time hereinbefore mentioned and limited for the payment thereof respectively, then and in such case such default shall not work a forfeiture of this policy, but the sum of five thousand dollars, the amount insured, shall be then commuted or reduced to the sum of the annual premiums paid.

2nd. That if the said insured shall fail to pay annually, in advance, the interest on any unpaid notes or loans which may be owing by said insured to said company, on account of any of the above-mentioned annual premiums at the office of the company, in the city of St. Louis, or to agents, when they produce receipts signed by the president or secretary, then and in every such case the said company shall not be liable for the payment of the sum assured or any part thereof, and this policy shall cease and determine.

3rd. The said person whose life is hereby insured is permitted and limited to reside and travel by the usual modes of conveyance, either land, river, lake, or coastwise, in any portion of the United States or and Territories, the settled portions of the two Canadas, Nova Scotia,

New Brunswick (excepting that between the first day of July and the first of November he shall not pass south of the decree of north latitude), also in time of peace to cross and recross the Atlantic Ocean in government or first-class steamers or sailing-vessels, and to travel or reside in that portion of Europe bounded by the 40th and 60th decrees of latitude and the 20th decree of longitude east from Greenwich.

4th. If the said person whose life is hereby insured shall pass beyond the above-described limits, or shall be personally engaged in blasting, mining, submarine operations, or the production of high inflam'able or explosing substances, or in working or managing a steam-engine in any capacity, or as a mariner, engineer, fireman, conductor or laborer in any capacity, upon any sea, sound, inlet, river, lake or railroad, or shall enter military or naval service whatsoever (the militia when not in active excepted), without the consent of this company, in each or either of the foregoing cases, previously given in writing; or if he shall die by his own hand, by delirium, or the use of opium, or in consequence of a duel, or the violation of the laws of any nation, State or province, or if the declaration made in the application for this policy and upon the faith of which this policy is issued, shall be found in any respect untrue, then and in every such case this policy shall be null and void.

5th. This policy shall not be binding on the company until countersigned by S. K. Foote or D. C. Smith, of Louisville, Ky., and the advance premium paid, and in every case where this policy shall cease, or become null and void, all previous payments made thereon, and all dividends, credits accruing therefrom shall be forfeited to the said company.

6th. If this policy be assigned, or held as security, written notice shall be given as soon as practicable to this company, and due proof of interest produced with proof of death.

In witness whereof the president of the St. Louis Mutual Life Insurance Company has hereunto subscribed his name, attested by the secretary, and caused the common seal of said company to be affixed, at their office at St. Louis, State of Missouri, this 24th day of April, one thousand eight hundred and sixty eight.

D. A. JANUARY,
President.

[SEAL.] WM. T. SELBY, *Secretary.*

[50-c. I. R. U. S.]

Countersigned this 1st day of May, 1868.

S. K. FOOTE,
Agent.

N. B.—Agents of this company are not authorized to grant permits, or to make, alter, or discharge contracts, or waive forfeitures. If a premium is received by the company after the day named in the policy for its payment, it is considered by the company and the assured as an act of grace or courtesy, and forms no precedent in regard to future payments.

ANNUAL LIFE.

(Endorsed on face of policy :)

In default payment of renewal premium due 24th October, 1873, this policy is commuted, reduced to eight hundred & twenty-five dollars, on condition that the interest on outstanding premium notes is paid annually, in advance.

MALC. CAMPBELL,
Assignee.

(Endorsed on back:)

Policy No. 10,937. Saint Louis Mutual Life Insurance Company. Assured on the life of James W. Lovell.

Amount	$5,000 00
Date, 24th April, 1868.	
Annual premium	$162 14
Note part of premium	$53 00
Cash part of premium	$109 14
22 Policy fee and rev. tax	1 50
	$163 64

Register S, page 270.

(Annexed to face of policy:)

Policy No. 10,937. Premium, $.

OFFICE OF THE ST. LOUIS MUTUAL
LIFE INSURANCE COMPANY,
Saint Louis, Ap'l 24, 1868.

In consideration of dollars extra premium paid on policy No. 10937 of the company, dated April 24, 1868, for $5,000, James W. Lovell, whose life is insured by said policy, has permission during the existence of said policy to be employed as a steamboat pilot or other officer engaged in commercial transportation, navigating the rivers, lakes, bays, and bayous of the United States, and while so occupied at all seasons of the year to pass south of the thirty-fifth degree of north latitude, without prejudice to said policy.

WM. T. SELBY,
Secretary.

[50-c. I. R. U. S.]

Injunction bond.—Filed July 3, 1876.

Know all men by these presents, that we, James W. Lovell and
23 Priscilla D. Lovell, principals, and L. T. Armstrong, security, are held and firmly bound unto the St. Louis Mutual Life Insurance Company, The St. Louis Life Insurance Company, & Wm. Morrow, State treasurer, in the penal sum of fifteen hundred dollars and cents, for which payment well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, by these presents, signed and dated this 3rd day of July, in the year of our Lord one thousand eight hundred and seventy-five.

The condition of the above obligation is such that whereas James W. Lovell and Priscilla D. Lovell the day of the date hereof prayed *prayed* for and obtained from the court of chancery, holden at Nashville, in the State of Tennessee, a fiat for a writ of injunction and attachment against said St. Louis Mutual Life Insurance Company, St. Louis Life Ins. Co., & Wm. Morrow, State treasurer, returnable to the chancery court holden at Nashville on the first Monday in October next, to attach the estate of the St. Louis Mutual Life Ins. Co. & the St. Louis Life Ins. Co., and particularly the $20,000 in bonds of the State
24 of *the State of* Tennessee deposited by said companies or either of them with the treasurer of the State to guarantee the citizens of

Tennessee from loss who might take policies in said companies or company, and to enjoin Wm. Morrow, State treasurer as aforesaid, from disposing in any manner of said bonds, except under the orders of this honorable court in this cause, all as set out in the bill as here referred to and made a part of this bond:

Now, if the said James W. Lovell and Priscilla D. Lovell shall prosecute the said injunction & attachment with effect, or, in case he fails therein, shall well and truly pay and satisfy the said St. Louis Mutual Life Insurance Co., The St. Louis Life Insurance Company, & Wm. Morrow, or either of them, all such cost and damages as shall be awarded and recovered against the said James W. Lovell and Priscilla D. Lovell in any suit or suits which may be hereafter brought for wrongfully su'ing out of said injunction and attachment, and shall moreover abide by and perform such orders and decrees as the court may make in this cause, and pay such costs and damages as the court may order, then the above obligation to be void, otherwise to re-
25 main in full force and effect.

JAMES W. LOVELL, [SEAL.]
PRISCILLA D. LOVELL, [SEAL.]
By att'y in fact, A. McCLAIN.
L. T. ARMSTRONG, *Sec'y.* [SEAL.]

I hereby acknowledge and bind myself for the prosecution of the above suit, and payment of all such cost as may be awarded on the final hearing thereof.

L. T. ARMSTRONG. [SEAL.]

Attachment.—Issued 3rd day of July, 1875.

STATE OF TENNESSEE:

To the sheriff of Davidson County, greeting:

Whereas James W. Lovell and wife have this day filed a bill of complaint in the chancery court at Nashville against the St. Louis Mutual Life Insurance Company et als., in which complainants have prayed for and obtained from the honorable Nathaniel Baxter, judge, &c., a fiat ordering a writ of attachment to issue, to attach the property specified in said bill of complaint, and said complainant having given bond and security as required by said order granting said attachment:

These are, therefore to command you to attach the estate of
and particularly the bonds deposited by the St. Louis Mutual Life
26 Insurance Company, or the St. Louis Life Insurance Co., with the treasurer of the State to indemnify the citizens of Tennessee who might take risks in said companies or company for losses they might sustain. Said bonds are those of the State of Tennessee, and amount, as alleged, to $20,000, or so much thereof as shall be of value sufficient to satisfy the debt and claim of complainants, being $822 & interest and the costs of this suit, and you will keep said property safely, so that you may have the same at all times forthcoming, to answer such orders and decrees as the court may make in relation thereto, unless the said defendant shall replevy the same out of your possession, by giving bond with good security in double the value of said property, conditioned to keep the same in the jurisdiction of this court and to have said property at all times forthcoming to answer such orders and decrees as the court may make in the case. And you will make due and legal return of how you have executed this writ.

Witness Nathaniel Baxter, jr., clerk and master of our court of
27 chancery, at Nashville, this first Monday in April, A. D. 1875, and 99th year of American Independence.

NATHANIEL BAXTER, JR.,
Clerk & Master.

HOGE,
D. C. & M.

(Endorsed on back:)

Came to hand same day issued, executed by levying this attachment on the bonds deposited by the St. Louis Mutual Life Insurance Company or the St. Louis Life Ins. Co., with the treasurer of the State of Tennessee. Said bonds are those of the State of Tennessee, and attached as the property of the defendants, and left the same in the hands of Wm. Morrow, State treasurer.

This July 8, 1875.

F. M. WOODALL,
D. Sh'ff.

Injunction.—Issued July 2, 1875.

STATE OF TENNESSEE:

To William Morrow, State treasurer, and to his counsellors, attorneys, solicitors and agents, and each and every one of them, greeting:

Whereas in a certain suit this day instituted in our court of chancery at Nashville, by James W. Lovell and wife, complainants, against
28 The St. Louis Mutual Life Ins. Co. et als., defendants, the *the* complainants having obtained from the honorable Nathaniel Baxter, judge, &c., a fiat for a writ of injunction to issue to enjoin the said Wm. Morrow, State treasurer, from disposing of in any manner the bonds of the State of Tennessee deposited with him as indemnity against loss to citizens of Tennessee who might take out policies in said companies by the said St. Louis Mutual Life Insurance Company, and the complainants having executed the bond required by said fiat,

We therefore, in consideration of the premises aforesaid, do strictly enjoin and command you the said Wm. Morrow, State treasurer, and all and every persons before mentioned, under the penalty prescribed by law, of your and every of your goods, lands, and tenements to be levied to our use, that you and every of you do absolutely desist from disposing of in any manner of the bonds in your hands so deposited as aforesaid until hearing of the same in our said court of chancery.

Witness Nathaniel Baxter, jr., clerk & master of our said court, at office, the first Monday in April, in the year of our Lord one thou-
29 sand eight hundred and seventy-five, and in the 99th year of our Independence.

NATHANIEL BAXTER, JR.,
Clerk & Master.

HOGE,
Deputy Clerk & Master.

(Endorsed on back:)

Came to hand same day issued and executed the within injunction upon William Morrow, State treasurer, by reading and making known the tenor of this injunction to him.

July 8, 1875.

E. D. WHITWORTH,
Sheriff D. Co.

Subpœna to answer.—Issued August 9, 1875.

STATE OF TENNESSEE:

To the sheriff of Davidson County, greeting:

We command you to summon St. Louis Mutual Life Insurance Company, St. Louis Life Ins. Co., and Wm. Morrow, State treasurer, if to be found in your county, to appear before the chancellor of the chancery court at Nashville, at the next court to be held at the court-house in Nashville, on the first Monday in October next, then and there to answer the original bill of complaint of James W. Lovell & wife
30 vs. St. Louis Mutual Life Ins. Co. et al., and further do and receive what our said court shall consider in that behalf; and this you shall in no wise omit, under the penalty prescribed by law. Herein fail not, and have then and there this writ.

Witness Nathaniel Baxter, jr., clerk & master of our said chancery court, at office in the court-house, at the city of Nashville, this first Monday in April, 1875, and the 99th year of American Independance.

NATHANIEL BAXTER, JR.,
Clerk & Master,

By A. B. HOGE,
D. C. and M.

(Endorsed on back:)

I hereby depute W. E. Whitworth to execute this subpœna on Wm. Morrow.

August 9, 1875.

E. D. WHITWORTH.

I hereby acknowledge service of this s'p'a & copy bill for St. Louis Mutual Life Insurance Company & St. Louis Life Insurance Company.

R. McP. SMITH,
Sol'r.

Ex. on Wm. Morrow, August 9, 1875.

W. E. WHITWORTH,
S. D. Sh'ff.

Pro confesso.

1875, October rules, Oct. 13.

Pro confesso as to all the def'ts & set for hearing ex parte.

1875, October rules, October 20.

31 By direction of complainants' solicitor the above pro confesso is set aside as to the St. Louis Mutual Life Insurance Co. and the St. Louis Life Insurance Co., & they are permitted to file their answer.

NATH'L BAXTER, JR.,
C. & M.

Answer.—Filed October 20th, 1875.

The answer of the St. Louis Mutual Life Insurance Company & the St. Louis Life Insurance Company to the bill of complaint of James W. Lovell and Priscilla his wife, filed in the chancery court at Nashville, No. 8289, rules.

The defendants, reserving the benefit of all proper exceptions, for answer to said bill, say as follows:

They were incorporated as stated in the bill, and their home office was and is in St. Louis, and the first mentioned company had, in April and May, 1868, an agency in Nashville. During said period said James W. Lovell did take out a policy upon his life in said company, No. 10937. Said policy is annexed to the bill of complainants and will speak for itself as to its terms and conditions; defendants refer thereto for its contents.

32 Defendants do not know upon what representations said policy was taken out, or that any representations were made to induce said Lovell to take out said policy, nor has either of defendants any information touching this matter & they require proof here, if the matter be material. They presume that the statements of the bill are correct as to payment of premiums & the execution of premium notes till & including April 24, 1873.

It is true that the affairs of the St. Louis Mutual Life Insurance Company became embarrassed as indicated by the bill. The history of what is alluded to by this part of the bill is the following:

On Oct. 7, 1873, William Selby, superintendent of the insurance department of the State of Missouri, filed in the circuit court of St. Louis County a petition setting forth that said St. Louis Mutual Life Insurance Company was insolvent and praying for an injunction against its carrying on the business further, and an injunction to this effect was issued. And thereafter, said Selby resigning his office, Gen'l Frank P. Blair succeeded him, and the cause was revived in his name as such

33 superintendant, and said court pronounced said company to be insolvent and restrained it from reinsuring its risks without the order and consent of the court.

And in the progress of said matter said Frank P. Blair, superintendant as aforesaid, on Dec. 13, 1873, filed his motion in said cause, praying said court to order said company to reinsure all the risks held by it in the Mound City Life Insurance Company upon the terms set forth in said motion, and allow him to dismiss his suit as aforesaid. Said terms were that said St. Louis Mutual Life Insurance Company should transfer to said Mound City Life Insurance Company all of its assets, real, personal, or mixed, wheresoever situated, and that in consideration of said transfer said Mound City Life Insurance Company, whose name was afterwards changed to the St. Louis Life Insurance Company, should reinsure all risks of said St. Louis Mutual Life Insurance Company, and assume all its liabilities, and should for these purposes increase its capital stock to the sum of $1,000,000, such increase to be secured and paid according to the laws of the State of Missouri, and to the satisfaction of said superintendent. Said motion was duly

34 considered by said court, and was ultimately granted. All said proceedings were of great public notoriety, being published in all the daily papers of the city of St. Louis and in the principal papers in other portions of Missouri, and in other States, and defendants believe & charge that they are well known to the compl'ts hereto.

Notwithstanding the publicity given to the whole arrangement by such publications, which included the exact terms thereof, no policy-holder of said St. Louis Mutual Life Insurance Company, and no stock-holder therein, appeared in opposition thereto, or made any objections, and said arrangement was accordingly fully consum'ated and carried out according to the terms of said motion.

And said St. Louis Life Insurance Company in good faith undertook, and is now undertaking, so to carry out said arrangement, and to perform all the terms & conditions. covenants, promises, & agreements thereof. All the stockholders of the said St. Louis Mutual Life Insurance Company have in good faith accepted the said transfer & reinsurance under the order of said court, & a very large majority of its policy-holders, to wit, more than 8,000, have surrendered their
35 policies in it, & accepted policies in lieu from St. Louis Life Insurance Company, which is, moreover, by the terms of its contract with the St. Louis Mutual Life Insurance Company, so approved as aforesaid, directly liable on any and all policies issued by said last-mentioned company to the same extent as itself would have been no such reinsurance as aforesaid.

Said contract was made & said transfer and assumption of liabilities executed, and said increase of capital stock made all on or before Jan. 17, 1874.

On Dec'r 22, 1873, a circular letter was addressed by the then president of the St. Louis Mutual Life Insurance Company to every one of its policy-holders setting forth its insolvency, and that, for the benefit of said policy-holders, it had been concluded to enter into the arrangement hereinbefore set forth with the Mound City Life Insurance, now the St. Louis Life Insurance Company, and that said arrangement had received the approval of said court in said cause & of said superintendant of said insurance department, and that by means of said arrangement the policy-holders of said insolvent company were receiving the greatest security possible under the circumstances, & def'ts
36 aver that a copy of said letter was sent to complainants. No stockholders of said St. Louis Mutual Life Insurance Company ever objected to the carrying out of said arrangement, nor until recently has any policy-holder ever objected thereto, & the St. Louis Life Insurance Company has been suffered to assume and pay the liabilities of said St. Louis Mutual Life Insurance Company to an amount exceeding two millions of dollars, and to make changes of its policies as aforesaid, & to expend its labor & devote its time and vigilance for the benefit of the policy-holders of said St. Louis Mutual Life Insurance Company, and to bear all the burdens imposed upon it by contract.

It is of course very absurd, in view of the circumstances, for any policy-holder of the St. Louis Mutual Life Insurance Company to complain about being transferred from a mutual to a stock company, since the mutual company in question being insolvent, there would never have been any more dividends. After the transfer, the policy-holders of the insolvent mutual company had in its room a wealthy, powerful, solid company to make good their policies.

37 But the St. Louis Life Insurance Company succeeding to the obligations succeeded also to the rights of the St. Louis Mutual Life *Mutual* Company, & these it is its duty to its stockholders to insist upon.

Complainant enjoyed the benefit of all the dividends to which he was entitled in the St. Louis Mutual Life Insurance Company, the same being deducted from the payments to be made by him, and by noting the

amounts of these payments all obscurity in the premises might have been removed, or if not, then prompt attention would have been paid to any inquiries he might have made for the purposes of clar'fying his perceptions. He does not allege that he made any inquiry. Defendants would suggest that obscurity may result from imperfect vision as well as from deficient light. Defendants can neither admit nor deny the allegations of the bill as to the negotiations between said James W. Lovell and the former agent of the St. Louis Mutual Life Insurance Company, or as to what he or any other agent may have represented or promised to said complainant in that regard.

38 Nor are they informed as to any arrangement agreed to be made as to the commutation of the policy as alleged in the bill. It is true that before April 24th, 1873, said company had ceased to have an agent in Nashville. Defendants suppose that complainants correctly state the amount paid on the policy aforesaid.

They report that they are uninformed as to any arrangement between said James W. Lovell and the former agent of the St. Louis Mutual Life Insurance Company as to the procurement of a paid up policy by the former by virtue of the payments he had made. They presume however that by reason of the default the policy was properly commuted & reduced as stated in the bill and as appearing from the entry upon the policy itself.

They are not informed as to the avocation of said Lovell or why upon the return of the policy to his address he did not promptly of what in that he may have regarded as a violation of any arrangement had with any agent of the company involved. They insist that in such case it was his duty to make such complaint at once, and that unless his failure be explained by proof, a waiver of any such grounds of complaint

39 (supposing them to have existed) is to be inferred.

Defendants have no information as to any correspondence or reference or interview or of any sort of communication between said James W. Lovell and the former agent of said St. Louis Mutual Life Insurance Company, at Louisville, after the receipt to said Lovell's address of said commuted policy, in which any complaint was made by said Lovell of the action of said company or any remarks made by said agent as to the transactions between said company and the Mound City Life Insurance Company, and so they cannot admit nor deny that part of the bill.

Respondents would point out that, among the terms and conditions of said policy, is the following:

"2nd. That if the said insured shall fail to pay the two annual premiums next due and payable after the date hereof on or before the day above mentioned for the payment thereof, or shall fail to pay annually in advance the interest on any unpaid notes or loans which may be owing by said insured to said company on account of any of the above mentioned annual premiums, at the office of the company in the

40 city of St. Louis, or to agents when they produce receipts signed by the president or secretary, then and in every such case the said company shall not be liable for the sum assured or any part thereof, and this policy shall cease and determine."

And defendants aver that the interest due from said Jas. W. Lovell on Ap'l 24, 1874, on his unpaid notes to said St. Louis Mutual Life Insurance Company was not paid in advance at the time when it ought so to have been paid; that in consequence of this & other similar defaults in payment of interest said policy became forfeited under the provisions thereof just set forth, and so defendants say that complainants are not entitled to any part of the relief against them sought by their bill, and

now having fully answered said bill they pray to be hence dismissed with costs.

R. McP. SMITH,
Solicitor.

The seal of the St. Louis Life Ins. Co., St. Louis, Missouri.
The seal of the St. Louis Mutual Life Insurance Company, Missouri.

Petition & bond for removal.—Filed Apr. 28, 1876.

To the honorable W. F. Cooper, chancellor, &c.:

41 The petition of the St. Louis Mutual Life Ins. Company and the St. Louis Life Insurance Company would respectfully represent as follows:

Petitioners, being both of them corporations chartered under the laws of the State of Missouri, and having the principal offices and places of business in said St. Louis, in said State, are defendants in a certain suit of civil nature in equity, now pending in the chancery court of Davidson County, No. 8289, rule docket of said court, in which James W. Lovell and his wife, Priscilla D. Lovell, both citizens of the State of Tennessee, are complainants. The matter in dispute in said suit exceeds, exclusive of costs, the sum or value of five hundred dollars. The controversy in said suit is wholly between said complainants on the one side and petitioners on the other, and can be fully determined as between them. The present term of said chancery court is the first at which said cause could be tried, the bill therein having been filed July 3, 1875. Petitioners pray that said cause be removed into the circuit court of the United States for the middle district of Tennessee, to be held at Nashville on the 3rd Monday of October, 1876, they having filed the bond nec-

42 essary for that purpose.

R. McP. SMITH, *Sol'r.*

We, the St. Louis Mutual Life Insurance Company and the St. Louis Life Insurance Company, principals, and R. McP. Smith, surety, hereby acknowledge ourselves indebted to James W. Lovell and his wife, Priscilla D. Lovell, in the sum of two hundred dollars, to be void, however, if said principals shall enter in the district court of the United States for the middle district of Tennessee, on the first day of its term, to wit, on the 3rd Monday of October, 1876, a copy of the record in the suit of said James W. Lovell & wife versus said petitioners & William Morrow, pending now in the chancery court of Davidson County, No. 8289, rule docket of said court, and if said principals shall further pay all costs that may be awarded by said circuit court, if it shall hold that said suit was wrongfully or improperly removed thereto, otherwise this obligation to remain in full force and virtue.

Witness the hands of said obligors, this Ap'l , 1876.

THE ST. LOUIS MUTUAL LIFE INSURANCE COMPANY,
By R. McP. SMITH, *Att'y.*
THE ST. LOUIS LIFE INSURANCE CO.,
By R. McP. SMITH, *Att'y.*
R. McP. SMITH, *Security.*

43 *Decree for removal, May* 30, 1876.

JAMES W. LOVELL
vs.
THE ST. LOUIS MUTUAL LIFE INSURANCE Company & The St. Louis Life Insurance Co. et al.

On the application of defendants the St. Louis Mutual Life Insurance

Company and the St. Louis Life Insurance Company (the latter now being known and styled the Columbia Life Insurance Company), and their petition presenting a proper case therefor, and they having given bond as required in removal cases, it was ordered by the court that this cause be removed into the circuit court of the United States for the middle district of Tennessee on or before the 3rd Monday of October next, the first day of its next term at Nashville.

Certificate.

STATE OF TENNESSEE,
Davidson County:

I, Nathaniel Baxter, jr., clerk and master of the chancery court at Nashville, do hereby certify that the foregoing is a full, true, and perfect transcript of all the papers, records, and proceedings had and
44 filed in the chancery court at Nashville in the case wherein James W. Lovell and wife are complainants, and the St. Louis Mutual Life Insurance Company et al. are defendants, as the same now appear of record and on file in my office.

In testimony whereof I hereunto set my hand and affix the official seal of said court at office in the court-house at Nashville on this the 19th day of June, 1876, and 100th year of American Independance.

NATHANIEL BAXTER, JR.,
Clk & Master.

Bill of cost.

State tax	$5 00
County tax	2 50
Nathaniel Baxter, jr., C. & M.:	
Bill, 25; aff't, 25; bond, 75; ent. sec., 50; reg. bond, 50; enrolling bill, 3.25; aff., $1.00; inj., $1.00; s'p'a, $1; copy bill, $2.25; answer, 25; notice, 25; enrolling same, $2.00; pro conf., 25; order setting same aside, 25; decree (537), 25; filing petition for removal, 25; aff't, 25; bonds, 50; ent. sec., 25; reg. bond, 25; enrolling same, 75; rules, 1.60; 10 dockets, 60; conto., 25; order, &c., $1; cert. & seal, 75; transcript, 9.25	31 05
E. D. Whitworth, sh'ff, 1 inj'ct. & 1 notice	1 50
W. E. Whitworth, D. S., 1 s'p'a	1 00
45 F. M. Woodall, D. S., 1 att	1 00
	$42 05

Cost of transcript paid by W. H. Black, cashier Columbia Life-Insurance Company, St. Louis, Mo., $9.75.

July 27, 1876.

NATHANIEL BAXTER, JR., *C. & M.*,
By HARRY BASSETT.

Affidavit of complainants' attorney.

In this cause A. McClain makes oath that he is the solicitor of complainants, and has been their sol'r from the commencement of this suit till now; that the amendment which complainant now prays to be filed

is material, and is not sought to be made for the purpose of vexation or delay.

A. McCLAIN.

Sworn to and subscribed before me Nov. 2, 1876.

J. W. CAMPBELL,
U. S. Com'r.

Amended bill.—Filed Nov. 2, 1876.

To the hon. judges of the circuit court of the United States for the middle district of Tennessee.

The amended bill of complaint of James W. Lovell and his wife,
46 Priscilla D. Lovell, to the original bill of complaint heretofore filed in the chancery court of Davidson County, Tennessee, against the St. Louis Mutual Life-Insurance Company and the St. Louis Life-Insurance Company and William Morrow, treasurer of the State of Tennessee, and now pending in this court from removal from said chancery court into this court, according to the provisions of an act of Congress in such case made and provided.

Complainants would respectfully represent and show your honors that they heretofore filed their original bill in the said chancery court of Davidson County against the said parties mentioned in the caption hereof, charging, among other things, that complainants are citizens of Smith County, in the State of Tennessee, and that the said two companies are companies incorporated by the statute of the State of Missouri, and having their principal place of business in the city of St. Louis, in that State; and that said Wm. Morrow was the treasurer of the State of Tennessee, holding a large amount of the bonds of the State of Tennessee deposited with him by the said St. Louis Mutual Life-Insurance Company, under a law of Tennessee, as a security for citizens of
47 Tennessee who should take life-insurance policies from that company, and that complainant had received a policy for $5,000 on his own life for the benefit of his co-complainant, Priscilla D.

For the various other charges in said bill, without further repetition, complainants would now refer to said original bill, and here adopt the same as part of this amended bill. Said cause, as stated in the caption, is now pending in this hon'l court under the provisions of an act of Congress.

Complainants, further charging, say that at the date of the said policy, which is made an exhibit to said original bill and made a part of the same, complainant was in good health and had no serious affliction, but that subsequently thereto, viz, about the year 1871, he became afflicted seriously with the disease called "hermia," which affliction he still endures, and will be subject to, as he is advised by his physicians, as long as he lives. At the time of the rupture he was compelled to call to his assistance medical aid at considerable expense, and has since that time been repeatedly under the necessity of doing something, being
48 confined sometimes to his room for several days at a time in great pain. He has, however, during a portion of the time been able to perform the labor of a captain, and sometimes that of pilot, of a steamboat, which business he has at times since the date of said policy pursued within and by the permission of the said St. Louis Mutual Life-Insurance Company, which permission was given to him at the time

said policy was issued to him, and which is evidenced by the written and printed permit signed by the secretary of said St. Louis Mutual Life-Insurance Co., which bears date 24th April, 1868, and which was attached to the policy at the time the same was first delivered to complainant Jas. W., and which is copied into the transcript of the record of this cause filed in this court at page 20 of said transcript.

Complainants pray that the parties named in the caption be made defendants hereto, and that all suitable process and publication and copy bill issue to that end, said William Morrow being a citizen of Davidson County, Tennessee, and that all decrees suitable and proper to secure to the complainants the relief prayed in their said original bill be granted, and that a decree be rendered for such additional
49 relief as they may be entitled to, predicated upon the additional charges herein made.

Complainants pray for all such other and general relief as they may be entitled to in the premises.

Complainants are advised that since the original bill was filed, the name of the said St. Louis Life Insurance Company has been changed so that it is now styled the St. Louis Insurance Company.

Let publication be made according to the changed name of said company.

A. McCLAIN,
Solicitor.

Deposition of James W. Lovell.—Filed Nov. 2, 1876.

JAMES W. LOVELL ET AL.
vs.
THE ST. LOUIS MUTUAL LIFE INSURANCE CO. et al.

In the circuit court of the United States for the middle district of Tennessee.

The deposition of James W. Lovell, one of the complainants, taken by consent of the solicitors on both sides, waiving notice, commission, caption, and certificate.

The witness having been duly sworn, deposes as follows:

50 I am one of the complainants in this cause, and the statements contained in the original bill are all true as therein set forth, and I now adopt them all as a part of this deposition.

I made the contract for the policy in Nashville with Dr. Sawrie, who was then the agent of the St. Louis Mutual Life Insurance Company at Nashville, and it was distinctly understood between us that I was to continue the business of steamboating, at which I was then engaged and had been for many years previous. In consequence of this consent on the part of the company the premium stipulated in the contract was something larger than it otherwise would have been as Dr. Sawrie told me at that time.

The application for the policy was sent to St. Louis and when the policy was sent to me there was attached to it the little strip of paper which is still attached to it, as it now remains in the file in the chancery court at Nashville in this cause, on which little strips of paper is printed and written the following words and figures, which also appear in the transcript filed in this court at page 20 of the transcript, viz:

Policy No. 10937. Premium of $.

OFFICE OF THE ST. LOUIS MUTUAL
LIFE INSURANCE COMPANY,
Saint Louis, April 24, 1868.

51 In consideration of dollars extra premium paid on policy No. 10937 of the company, dated Ap'l 24, 1868, for $5,000, James W. Lovell, whose life is insured by said policy, has permission during the existance of said policy to be employed as a steamboat pilot or other officer engaged in commercial transportation, navigating the rivers, lakes, bays, and bayous of the United States, and while so occupied at all seasons of the year to pass south of the thirty-fifth degree of nort' latitude, without prejudice to said policy.

WM. T. SELBY,
Secretary.

[5c. I. R. U. S.]

I made all the payments promptly in pursuance of the terms and provisions of the policy till and including the semi-annual payment of the 24th April, 1873. After that time there was outstanding one annual premium note, the interest on which would fall due 24th April, 1874. Very soon after the semi-annual cash premium was paid on the 24th April, 1873, I stated to Mr. Foote, who was agent of the company at Louisville, Kentucky (there being at that time no agent at Nashville), that I desired to get a paid-up policy. This agent, Foote, gave to me the same
52 assurance which Dr. Saurie had made to me at the outset in regard to my right to take a paid-up policy, and that was that after two first annual premiums were paid promptly that then if I should desire to take a paid-up policy all the money which I had paid would be credited to me, and that I could have a paid-up policy for such amount as the amount of money so paid would have entitled me to if I had at the outset taken a paid-up policy.

The amount of money which I had paid, including the payment of the 24th April, 1873, was about $880.00. This demand for a paid-up policy was made within a very few days after this payment of 24th April, 1873, was made, and as well as I now remember, in the month of April, 1873.

The said agent suggested to me that by demanding a paid-up policy at that particular time I would loose the benefit of the semi-annual payment which I had just made of 24th April, 1873,
53 and that I had better wait and make the semi-annual payment of 24th April, 1873, and then both the semi-annual payments would have been made for the year, counting 24th April as the commencement of the policy year, and then I would get credit for both these semi-annual payments for the year 1873. I remarked to him that I would prefer to loose the semi-annual payment of April, 1873, than to wait any longer, and persisted in my demand for a paid-up policy; so with this distinct understanding that I was to have a paid up policy upon the terms which I have just stated, I surrendered the original policy into the hands of the agent, Foote, to be sent by him to St. Louis, and a paid-up policy returned to me in its stead. It was not intimated to me then nor has it been since intimated or pretended, so far as I have heard, that I was at that time in any default whatever about anything connected with the policy, and in fact I was not in default in any way.

I was at that time engaged in the business of steamboating, and

was consequently seldom at *his* residence in Smith County, Ten-
54 essee. When the matter stood in this condition, and I was in constant and daily expectation of receiving the paid-up policy with the outstanding premium note, both of which Foote had promised should be sent to me, I was greatly astonished to receive through the mail, a request to pay the interest on the outstanding premium note. Soon after I had received this notice I was at home in Smith County, and learned for the first time that the original policy had been returned. My post-office was Dixon's Springs, and the policy had been sent by mail to Carthage. How long it had laid there before I got it, I am not able to determine. On the margin of the policy there appears to have been written after I gave it to Foote, as before stated, the following words, which are found in the transcript from the chancery court, at page 19, viz:

In default of payment of renewal premium due 24th October, 1873, this policy is commuted and reduced to eight hundred and twenty-
55 two dollars on condition that the interest on outstanding premium notes is paid annually in advance.

M. A. CAMPBELL,
Assignee.

On receiving the original policy thus endorsed, which I think was as late as the summer of 1874, I immediately made complaint to the agent at Louisville, and expressed my astonishment at the course the company had pursued in the matter. I told him that the agreement was distinctly made when I returned the original policy that I should receive a paid-up policy and the outstanding premium note in its stead. His reply was that since the agreement for a paid-up policy was made that the St. Louis Mutual Life Insurance Co. had sold out to the Mound City Life Insurance Co., and that a new policy could not be issued & that the old one could not be reinstated, and that it was forfeited. I never did in any manner give my assent to the sale or transfer of the assets of the St. Louis Mutual Life Insurance Com-
56 pany to the Mound City Life Insurance Company or to any other company or to any corporation or person, and I never did agree to accept the Mound City Life Insurance Company or the St. Louis Life Ins. Co. or any other corporation or person in lieu or stead of the St. Louis Mutual Life Insurance Company in the matter of said policy, nor have I in any way released or discharged the St. Louis Mutual Life Ins. Co. from their obligations arising on said policy. I never received the circular notice referred to in the answer of defendants in this case, and never heard of it until I heard of it through the mention made of it in said answer.

As to the proceedings in court at St. Louis, to which defendants refer in their answer, I heard that the St. Louis Mutual Life Insurance Company had been enjoined from doing business; but this was the extent of my information as to the orders of court. As to the other orders of court referred to in the answer, defendant's answer in this case
57 gives the first information on that subject I ever had.

As to the sale and transfer of the assets of the St. Louis Mutual Life Ins. Co. to the Mound City Life Insurance Co., the statements made by the agent at Louisville, already referred to in this deposition, made to me when I went to him and demanded to know why the paid-up policy had not been sent to me, was the first information I ever had of the sale and transfer.

When I received the policy in 1868 I was in good health, and without any serious bodily affliction, but about the year 1870 I was ruptured, and from that time till now have been afflicted with hernia, so much so as to amount to a serious affliction, and have been at different times under the necessity of calling in medical assistance at considerable expense. The desease is permanent, and, as I am advised by my physician, is incurable, and will remain an affliction as long as I live.

Cross-examination:

Did you ever read over your policy carefully?

58 I never did read it over until I was dunned for the interest on the outstanding note mentioned in my bill. This was after I had given up my policy in order to receive a paid-up policy.

What did you understand the provision to mean which is contained on the 16th page of the transcript at the top? I have marked the passage A.

I understood that in case of default, after having made two payments, I had the right to give up my policy and receive from the company a paid-up policy for the amount which the sum of all the payments as a single payment would purchase.

When you speak of any promises being made to you by agents of the company of a paid-up policy, did you mean that they or any of them promised you a different paid-up policy from what the terms of your policy entitled you to receive?

59 No; I thought I was promised the sort of policy that my policy entitled me to.

When you made your last payment had you not a note outstanding in the company's hands?

I had.

Is the note now exhibited to you, marked B, and annexed hereto, the note left outstanding in the company s hands?

It is.

Was any interest ever paid on it by you after the commutation of your policy?

No; it was my understanding that the note would be returned with the paid-up policy.

When was your last payment made?

In April, 1873.

JAS. W. LOVELL.

We agree that the foregoing deposition of James W. Lovell may read as evidence in the case of James W. Lovell & wife against

60 the St. Louis Mutual Life Insurance Company and others and pending in the circuit court of the United States for the middle district of Tennessee, waiving oath, caption, and certificate.

This 7th October, 1876.

A. McCLAIN,
Sol'r for Compl'ts.
R. McP. SMITH,
For Defendants.

Exhibit A to foregoing deposition.

No. 10937. $5,000.
Name, Jas. W. Lovell.
Issued Ap'l 24, 1868.

Residence, Dixon Springs, Tenn.
Age at issue, 40.
Payable in .
Plan, O. L. A. Prem., $162.14. Payable ½ annually. ½ cash, $54.57. Note, $53.00.
Outstanding, 73 note, $235.36. Short note, $.
Interest on notes, per cent. per annum.
R. Am., 4½ per cent. $.
R. Am., 6 per cent. $.
No. of premiums paid, . Last payment, Ap'l, 1873.
Commuted dr'ft 10, '73, to $822. Cancelled dr'ft Mr. 74.
Date of birth, .
Memorandum. Status.
Enquiry from Mr. Britton. Memo.
Interest due Ap'l 24, 1874, not paid.
61 Policy is forfeited.
Oct. 16, 1875.

N. R. BRITTON.

Exhibit B to Lovell's depo.

$235.26
16 00 reduction for '73.

219.26

ST. LOUIS, *April* 24, 1873.

Twelve months after date, for value received, I promise to pay to the Saint Louis Mutual Life Insurance Company, or order, two hundred & thirty-five & $\frac{26}{100}$ dollars, being for past premium due and payable on policy No. 10,937 of said company, on the life of James W. Lovell, dated Ap'l 24, 1868, which policy, and all payments and profits which may become due thereon, are hereby pledged and hypothecated to said company for the payment of this note.

JAS. W. LOVELL.

Replication.—Filed March 30, 1877.

The repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answers of said defendants, for replication thereunto saith that they doth and will aver,
62 maintain and prove said bills to be certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this repliant, in that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is ready to aver, maintain and prove, as the honorable court shall direct, and humbly prays as in and by their said bill they have prayed already.

A. McCLAIN,
Sol'r for Compl'ts.

Deposition of M. T. Polk, State treasurer.—Filed Ap'l 12, 1877.

In the circuit court of the United States for the middle district of Tennessee.

JAS. W. LOVELL & HIS WIFE, PRISCILLA D.,
vs.
ST. LOUIS MUTUAL LIFE INSURANCE COMPANY et als.

63 Interrogatories propounded by complainant, to be answered by M. T. Polk, treasurer of the State of Tennessee.

Int. 1. Are you at this time the treasurer of the State of Tennessee? and if so, please state what amount of the bonds of the State of Tennessee belonging to the St. Louis Mutual *Insurance* Life Insurance Company, or the St. Louis Life Insurance, and at this time in your hands as treasurer of the State of Tennessee; and, if any, the respective amounts, and dates of each bond, when issued, and when payable, and the amount of coupons attached; and also state in what way they came into your hands, and for what purpose you are holding them.

Cross-examination and formalities of caption, &c., waived.

R. McP. SMITH, *Sol.*

In answer to above, I will state that I have in my hands, as treasurer of the State of Tennessee, $20,000 in Tennessee bonds, deposited
64 by the St. Louis Mutual Life Insurance Co., under the 3rd sec. of act of March 13, 1868, and held for benefit of Tenn. policy holders in that company.

The bonds are numbered as follows: 9863, 10782, 11110, 11271, 9521, 7952, 9718, 648, 8147, 2545, 9127, 8780, 7939, 5815, 3340, 2265, 1407, 7997, 9874 & 8599, and have January, 1876, and subsequent coupons, attached. I am the present treasurer of the State of Tennessee, and insurance commissioner.

MARSHALL T. POLK,
Treas. & Ins. Com'r.

Deposition of H. B. Haynie.

Interrogatories, filed by complainant, to be answered by Henry B. Haynie, of Smith County, Tennessee, which is in the said middle district, after the clerk has given the defendants, or their solicitor, ten days' notice of the filing of the same, according to law.

This deposition, when taken, to be read in evidence in said cause, on the hearing thereof, which cause is now pending in said court, and at issue.

65 Question 1. State whether or not you are a physician; and, if so, how long have you been engaged in the practice of medicine?

Ans. I am a physician, and have been in the practice 37 years.

Ques. 2. Did you or not at any time as a physician treat the complainant, James W. Lovell, for the disease called hernia or rupture of the bowels; and, if so, describe the injury occasioned, and where did you wait upon him, and how often did you treat him for that disease?

Ans. I treated J. W. Lovell for inguinal hernia. The bowels had protruded to size of a walnut, quite pain' and difficult to return. This was

the first knowledge I had of his having the disease; I waited on him at his home only one time.

Question 3. State the date as near as you can when you treated him the first time for this disease.

Ans. I treated him on the 1st January, 1872; have never treated him since.

66 Question 4. Did he or not suffer much from this disease, and has he yet recovered from the effects of it, and is the disease in his instance incurable?

Ans. He suffered severely until the bowels was returned, and still wears a truss. A radical cure is hardly probable in his case.

Question 5. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set the same forth fully and at large in your answer.

ANDREW McCLAIN,
Sol'r for Compl't.

Defendants waive cross-examination.

R. McP. SMITH, *Sol'r.*

The witness may write out his answers and swear to them before any officer who under the State law has power to administer oaths.

R. McP. SMITH, *Att'y.*

67 STATE OF TENNESSEE,
Smith County:

This day personally appeared before me, Charles H. Thorp, an acting justice of the peace for said county, H. B. Haynie and made oath that his answers to the above interrogatories are true to the best of his knowledge.

This June 23, 1877.

H. B. HAYNIE.

C. H. THORP,
J. P. for Smith Co.

Deposition of W. D. Talbot.—Filed July 25, 1877.

We agree that these answers be taken as the deposition of W. D. Talbot.

A. McCLAIN,
Sol'r for Compl't.
R. McP. SMITH,
Sol'r for Def'ts,

Interrogatories propounded by complainants in said cause, to be answered by witness W. D. Talbot.

1. Are you an agent located in Nashville, Tenn., for any life insurance company; and, if so, what one, and how long have you been so employed?

I am agent of Ætna Life Insurance Co., and located at Nashville, and have been such agent for 11 years nearly.

2. State what amount cash premium would be required to be paid on a paid-up policy of $5,000, say in 1874, on the life of a man then
68 46 years old and badly afflicted with hernia, with liberty to follow

the business of steamboating in the United States. What would be the cash premium required on such a policy on the life of such a man by a company whose rate of premiums would be for a policy of five thousand dollars upon the life of such a man at the age of 49 and before he was afflicted with hernia, and with said privilege of steamboating, as follows, viz, an annual premium of $162 paid in this way, an annual premium note of $53, and a semi-annual cash premium of $54.57?

Ans. The Ætna Life Insurance Company would charge a party 46 years old in a single payment of $5,000 life insurance $2,309.80 and $25 per annum extra for privilege of laboring on steamboat; this same party could not obtain the policy in our co. if badly afflicted with hernia unless he accepted the policy with a clause to the effect that if he died directly or indirectly from the hernia the policy would be void.

We had no rates graduated by the desirability of the risk; we
69 only take first-class risks, and the same for all parties of same age.

I mean by first-class subjects sound and healthly parties in all respects. This is the rule of all life companies so far as I know. The Ætna Life Insurance Company would charge a man 40 years of age for $5,000 an annual life rate of $153.55. Would charge the same man at 46 $190.85 for same policy.

W. D. TALBOT.

Cross-examination:

Is not the premium that has to be paid by one 30 years old in order to insure his life less than has to be paid by one 40 years old, and yet when the man 30 years old get to be 40, does he not go on paying the same premium he started out with; and if so, how is it that after he gets 40 years old he can continue to be insured for less premium than a new party of the same age—40 years?

Answer. It is. If a party insured at 30 and kept his payment up he will pay the same premium at 40 on the same policy. It is because
70 the rate is regulated for full life, and the party pays more at the commencement than is actually necessary to carry the risk; a portion of this excess of payment is set aside by the co. to meet the increasing risk as the party gets old, and at last to pay the loss with. The interest on this excess of payment is to meet the increasing rate of the risk, and to pay the loss at maturity. This sum is known by the companies as "reserve or self-insurance fund."

If parties paid according to the cost of insurance would their premiums increase from year to year with increase of age?

Answer. Yes.

Then I understand that according to the scheme by which a constant premium is paid from year to year from first to last, notwithstanding that the cost of insurance increases continually, it results that at first every one must pay in excess of the cost of insurance, and that
71 this excess is kept and invested by the company and known as the reserve. Is this correct?

Answer. It is.

Let me be sure I comprehend you. It is then the fact that at the end of the policy-holder's first year there will be a certain excess to his credit in the hands of the company, resulting from the fact that his premium was something in excess of the cost of insurance, and that at the end of the second year there will be a second excess, and so on, and that these successive excesses are kept and invested by the company, and is any account kept with the policy-holder by the company?

Answer. It is true that there is an excess each year, and that it is invested by the co. The co. has its policies classified, and puts each policy of the same kind on parties of same age in a class, and is able at any time to tell the amount of reserve due on any policy.

72 What elements is a premium made up of?

Answer. It is made up of the net cost of insurance, reserve, and a margin for expenses.

At the end of a given time from the date of insurance (say 10 years for instance), what part of the payments of the party would remain in the hands of the company?

Answer. The reserve.

Now, then, suppose that at the end of the ten years the company arbitrarily expelled a policy-holder who entered the company, say, at 30 years, but suppose that the company in getting rid of him gave him his reserve, now could he not by handing this reserve to another company get insurance then upon his original premium? Would not giving the new company the reserve counterbalance the party's increased age?

Answer. If in an insurable condition he could. It would.

W. D. TALBOT.

Minutes.

73 On the minutes of November 2, 1876, appears the following entry:

J. W. LOVELL & WIFE
vs.
THE ST. LOUIS MUTUAL LIFE INS. CO. ET AL.

Be it remembered that on motion of complainants, supported by affidavit, leave is granted them to file an amended bill, which is done.

It is further ordered by consent of parties that any evidence heretofore taken in this cause touching any matter charged in said amended bill and not mentioned and charged in the original bill, may be read without exception on the ground that said matters are not in issue at the time the evidence was taken, and be taken and regarded as though taken and filed after amended bill filed.

On May 1, 1877, the following entry appears upon the minutes:

JAMES W. LOVELL & WIFE
vs.
ST. LOUIS LIFE INSURANCE CO.

In this cause it is ordered that time be extended two months for taking proof on both sides.

74 On Jan'y 9th, 1879, a final decree is rendered as follows:

JAMES W. LOVELL ET AL.
vs.
THE ST. LOUIS MUTUAL LIFE INS. CO. ET AL.

This cause came on to be heard before the Hon. John Baxter, circuit judge, and Hon'l Connolly F. Trigg, district judge, holding the circuit court of the United States for the middle district of Tennessee, and the

judges differing in opinion upon the questions arising in the case, thereupon it was, in accordance with the opinion of the circuit judge, ordered, adjudged, and decreed that the bill of complaint be dismissed at their costs, for which fi. fa. may issue, but said dismissal is without prejudice to any rights of complainants or either of them.

JAMES W. LOVELL ET AL.
vs.
THE ST. LOUIS MUTUAL LIFE INS. CO. ET. AL.

In the circuit court of the United States for the middle district.

In the foregoing case the judges differing in opinion upon the
75 questions arising therein, thereupon the points upon which they were opposed were stated under the direction of the judges and certified by them, and it was ordered that said certificate be entered of record.

Said certificate is as follows:

Certificate.

JAMES W. LOVELL ET AL.
vs.
THE ST. LOUIS MUTUAL LIFE INS. CO. ET AL.

Upon the trial of this case the judges differed in opinion upon the following questions arising therein:

1st. Whether during the lifetime of complainant, James W. Lovell, any suit is maintainable upon the policy of life of life insurance set forth in the record in this case.

2nd. Whether the insolvency of the St. Louis Mutual Life Insurance Company and its contract of reinsurance of December, 1873, with the Mound City Life Insurance Company, accompanied by the transfer of the assets of the former to the latter company, as set forth in the record of this case operated to confer upon complainants, or either of them,
76 any right of action or suit against the St. Louis Mutual Life Insurance Company or against the St. Louis Life Insurance Company.

3rd. Whether, if so, complainants can maintain this suit upon this record apart from the other policy holders of said St. Louis Mutual Life Insurance Company, whose policies were in force at the time of said reinsurance transaction, and who, equally with complainants, dissented therefrom.

We certify that the foregoing is a correct statement of the points upon which our opinions were divided upon the trial of the foregoing case, prepared under our directions, and order that this certificate be entered of record on the minutes of the court.

JOHN BAXTER.
CONNOLLY F. TRIGG,
District Judge.

JAMES W. LOVELL ET AL.
vs.
THE ST. LOUIS MUTUAL LIFE INSURANCE COMpany et al.

In this case complainants prayed an appeal to the Supreme Court

77 of the United States, which is granted them (the judges having been divided in opinion in this case), and by agreement of parties time is given them until the March rules, 1879, to give the bond required by law for said appeal.

JOHN BAXTER.
Circuit Judge.
CONNOLLY F. TRIGG,
Dist. Judge.

78 *Appeal bond.*

Know all men by these presents that we, James W. Lovell and Priscella D. Lovell, principals, and L. T. Armstrong, security, are held and firmly bound unto The St. Louis Mutual Life Insurance Company, The St. Louis Life Insurance Company, and William Morrow, treasurer of the State of Tennessee, in the full and just sum of five hundred dollars to be paid to the said The St. Louis Mutual Life Insurance Company, The St. Louis Life Insurance Company, and William Morrow, treasurer of the State of Tennessee, their successors, executors or administrators, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated this the 27th day of February, 1879.

Whereas the above named James W. Lovell and Priscella D. Lovell have taken an appeal to the Supreme Court of the United States, to reverse a decree rendered in the cause of James W. Lovell and
79 wife against the said St. Louis Mutual Life Insurance Company and others by the circuit court of the United States for the middle district of Tennessee:

Now therefore the condition of the above obligation is such, that if the above named James W. Lovell and wife, Prescella D. Lovell, shall prosecute their said appeal with effect, and answer all cost if they shall fail to make good their plea, then this obligation to be void, otherwise to remain in full force and effect.

JAS. W. LOVELL,
PERCELLA D. LOVELL,
By L. T. ARMSTRONG,
L. T. ARMSTRONG, *Sec'y.*

Personally appeared L. T. Armstrong, the security above named, who makes oath that he is reasonably worth the sum of five hundred dollars, the penalty of the foregoing bond, in property subject to sale or execution after paying all his just debts & liabilities.

L. T. ARMSTRONG.

Subscribed and sworn to before me this 27th Feb'y, 1879.
LEWIS T. BAXTER,
Clerk U. S. Circuit Court.

80 Cost of transcript paid by complainants $13 35

Cost unpaid:

Cost chancery court Davidson Co., Tenn	$42 05
" clerk U. S. cir. court	22 21
	$64 26

MIDDLE DISTRICT OF TENNESSEE:

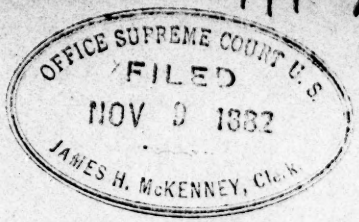
I, Lewis T. Baxter, clerk of the circuit court of the United States for said district, do hereby certify that the foregoing is a true and perfect transcript of the record and proceedings had in the cause lately determined in said court wherein James W. Lovell and wife were complainants and The St. Louis Mutual Life Insurance Company and others were defendants, as the same remains of record in my office.

Witness my hand and the seal of said court, at Nashville in said district, this 23rd day of September, A. D. 1879.

[SEAL.] LEWIS T. BAXTER, *Clk.*

(Indorsement on cover:) No. 1067. James W. Lovell and Priscella D. Lovell, appellants, vs. The St. Louis Mutual Life Insurance Company, The St. Louis Life Insurance Company, & William Morrow, treasurer of the State of Tennessee. M. Tennessee C. C. U. S. Filed 12th November, 1879.

111-264



Supreme Court of the United States.

No. 1067.

JAMES W. LOVELL AND HIS WIFE, PRISCILLA D. LOVELL,
APPELLANTS,

against

The SAINT LOUIS MUTUAL LIFE INSURANCE COMPANY, and the ST. LOUIS LIFE INSURANCE CO., and WM. MORROW, Treasurer of the State of Tennessee.

BRIEF AND ARGUMENT

OF

MONTGOMERY BLAIR AND ANDREW McCLAIN,

SOLICITORS FOR APPELLANTS.

Economical Print, Cor. College and Union, Nashville, Tenn.

JAMES W. LOVELL, and his wife, PRISCILLA D. LOVEL,

against

The SAINT LOUIS MUTUAL LIFE INSURANCE COMPANY, and the ST. LOUIS LIFE INSURANCE CO. and WM. MORROW, Treasurer of the State of Tennessee.

STATEMENT.

The Original Bill in this cause was filed in the Chancery Court of Davidson County, in the State of Tennessee, on the 3rd day of July, 1875, and was answered by the two defendant companies; and thereafter upon the petition of these companies the cause was transferred, by order of the said Chancery Court, to the Circuit Court of the United States, for the Middle District of Tennessee, under the provisions of the act of Congress.

(Rec. 15 and 16.)

The Bill was thereafter amended by leave of the court. (Rec. 17 and 26). The Bill sets forth the following facts: On the 24th of April, 1868, the policy of insurance on the life of Complainant, James W., for the benefit of his wife and Co-complainant, which is made exhibit A. to original bill, was issued to them by the St. Louis Mutual Life Insurance Company, for $5,000, to be paid within ninety days after the death of said James W.

It was stated in the policy that a semi-annual cash *premium* was to be paid on the 24th April and on the 24th October every year, and an annual *premium* note was also to be executed on the 24th April each year, due at 12 months, and the interest on this note was to be paid each year in advance.

If the first two semi-annual cash *premiums*, falling due after the policy went into effect, were paid up promptly, then any subsequent default in payment of this semi-annual cash *premium* was not to work a forfeiture of the policy, but the policy might be commuted from $5,000 to the amount of cash premiums paid down to the time of such default.

In default of payment of the interest on the annual *premium* note in advance, the policy was to be forfeited.

Lovell paid promptly all semi-annual cash *premiums* and all interest on the annual notes down to and including 24th April, 1873.

About this time or soon thereafter, Complainant, James W. Lovell made known to the agent of the Company at Louisville, Kentucky, (there being then no agent at Nashville) his desire to receive what he was informed by the agent he had a right to receive, and that was a paid up policy. He was assured, as he charges in his Bill and swears in his deposition, that all the money which he had paid in the way of *premiums* would be credited to him, and that he could have a paid up policy for such an amount as that much money (less the amount of the outstanding premium note) under the regulations of the company, would entitle him to if he had paid it all at one time and had taken a paid up policy without more. He was in no default whatever at this time. (Rec. p. 3 and 19.)

Relying on these assurances of the agent, he did in the spring of 1873, hand to the agent the policy to be taken to St. Louis and exchanged for a paid up policy. The policy having been thus placed in the hands of the agent, he heard no more of it for a long time; and it was as late as the summer of 1874, when, instead of sending to him a paid up policy he received the same original policy, made Exhibit A. to the Bill in this cause, (which he had handed to the agent,) with the indorsement on it in the following words and figures, viz:

"In default of payment of semi-annual *premium*, due 24 October, 1873, this policy is commuted and reduced to eight hundred and twenty-two dollars, on condition that the interest on outstanding *premium* note is paid annually in advance.

M. A. CAMPBELL, Assignee."

A short time before he received the policy thus endorsed, he had received a request through the mail to pay the interest on the outstanding *premium* note, which on its face was payable 24th April, 1874.

On receiving the policy thus endorsed, Lovell went to the Louisville agent and reminded him of the agreement under which he had placed the policy in his hands, and reminded him that he was to have received a paid up policy; but the agent told him

that since that agreement was made the St. Louis Mutual Life Insurance Co. had sold all the assets to the Mound City Life Insurance Co., and that such a thing as issuing to him a paid up policy, or reinstating his policy, was impossible and wholly outside the contract with the Mound City Life Insurance Co., and that his policy was forfeited.

Complainant proposed to pay the note and interest if the policy was reinstated, but the reply was as just stated, that this could not be done. (Rec. 4 and 20).

It is charged in the Bill that without his knowledge or consent this transfer of the assets was made, together with the good will of the Company, etc., and that this was done before the interest on the outsanding note had fallen due. (Rec. 4.)

The Bill further charges that under the laws of Tennessee, the Treasurer of the State, deft. William Morrow, held $20,000 of the Bonds of the State of Tennessee, the property of the St. Louis Mutual Life Insurance Co., which had been deposited with the Treasurer as indemnity against loss to citizens of Tennessee holding the life policies of said company.

The Bill prayed that these bonds might be attached and that all suitable decrees be rendered for the money paid to said company, and that his outstanding *premium* note be delivered up, and that said bonds be made available for the satisfaction of such decree as Complainants might receive, and that an account be ordered to ascertain the amount of money paid by Complainant. There is also a prayer for general relief. (Rec. 5).

The attachment was duly levied. (Rec. 10).

The Deft. Companies answered the Bill and set forth at some length in detail the condition of the St. Louis Mutual Life Insurance Co, and an account of its sale and transfer of its assets, name and good will, and franchises to the Mound City Life Insurance Co., and admitted the prompt payment of all *premiums* and interest down to and including April 24, 1873, and setting forth that on October 7, 1873, the Company had been injoined at the suit of State Superintendent of Insurance in Missouri from further carrying on business, and as early as or before January 17, 1874. had made the sale and transfer of its entire assets, etc., to the ~~St. Louis Mutual~~ Mound City Life Insurance Co., whose name was changed to that of St. Louis Life Insurance Co. It was also

disclosed in this answer that the St. Louis Mutual Life Insurance Co. was insolvent. (Rec. 12 to 15).

It was also set forth in this answer that the St. Louis Mutual Life Insurance Co., in this contract with the other Company, had provided for the re-insurance of all its policy holders in that Company.

In an Amended Bill, filed by leave of court, the fact that after the policy was issued Lovell had become ruptured, and was still laboring under the disease called "HERNIA," was charged and the prayer of the amended Bill was for such other and additional relief as this fact entitled the complainants to.

Proof was taken, fully establishing the entire charges and averments of the Bills, and showing when the disease "hernia" was contracted, and that the same was permanent and rendered the party uninsurable in any other company. (Rec. 17 to 26)

The cause was tried before the Circuit and District Judges, when the following certificate of division of opinion was entered:

1st. Whether during the life-time of complainant, James W. Lovell, any suit is maintainable upon the policy of life insurance set forth in the record in this case.

2d. Whether the insolvency of the St. Louis Mutual Life Insurance Co., and its contract of re-insurance of December, 1873, with the Mound City Life Insurance Co., accompanied by the transfer of the assets of the former to the latter company as set forth in the record of this case, operated to confer upon complainants, or either of them, any right of action or suit against the St Louis Mutual Life Insurance Co., or the St. Louis Life Insurance Co.

3d. Whether, if so, complainants can maintain this suit upon this record, apart from the other policy holders of said St. Louis Mutual Life Insurance Company, whose policies were in force at the time of said re-insurance transaction, and who equally with complainants dissented thereform.

The circuit Judge holding adverse to the complainants, the Bill was dismissed without prejudice to any rights of complainants or either of them, from which adjudication complainants have appealed.

BRIEF.

1st Question.

Is any suit maintainable during the life-time of James W. Lovell, upon the policy of life insurance set forth in the record in this case?

The case of McKee *vs.* Phœnix Insurance Co., (28 Missouri R., p 386), is a direct authority on that question.

That decision is fully supported by the case of Hochester *vs.* D'Latour. (20 English Law and Equity, R. 157).

Also by the case of Planch *vs.* Colburn. (8 Bingham, R. p. 14)

The St. Louis Court of Appeals reached a different conclusion in the case of Celsus Price, superintendent of insurance department of Missouri, against the St. Louis Mutual Life Insurance Co, and this was the case which misled his honor the Circuit Judge.

The case of King *vs.* the Accumulation Insurance Co., (3d Common Bench, R. 57), is relied upon to sustain this ruling in the Celsus Price case. But we will show in the argument that it is not an authority for the ruling in that case.

No question has ever been raised in this case by demurrer or otherwise as to the jurisdiction of the court in this cause. We insist that no such objection could have been successfully made at any time. But if it could have been successfully made before answer, it is too late to make the question now.

Code of Tennessee, sec. 4321. 1. Daniel Ch. Practice 579, 80. & n 4. Johns, Ch. R. 287. 2. Johns, Ch. R. 369.

The 2d point of division of opinion is this:—Whether the insolvency of the St. Louis Mutual Life Insurance Co., and its contract of re-insurance of December, 1873, with the Mound City Life Insurance Co., accompanied by the transfer of the assets of the former to the latter company, as set forth in the record of this case, operated to confer upon complainants or either of them, any right of action or suit against the St. Louis Mutual Life Insurance Co., or against the St. Louis Life Insurance Co.

If there is any substantial distinction between this point of division and the first one, what is that distinction?

The court may have had in its mind the distinction between a suit at law and a suit in equity. If this was really the ground of

distinction, then it was imaginary rather than real, for there was no demurrer interposed to the jurisdiction of the court, and therefore the court was at liberty to determine it, although it might have been a case proper originally for a court of law. So in this aspect of the case, if this honorable court shall hold favorably for complainants on the first point of division there will be no occasion to consider of the second. (4 Johnsons, ch. R. 287. 2 Johnsons, ch. R. 369. Code of Tennessee, 4321.)

But if we assume that this second point as stated means simply to raise the question, whether insolvency, contract of re-insurance, and tranfer of assets, gave complainants a right of suit in equity, (all questions as to the jurisdiction of a court of law out of the way) then the following authorities are in point:

2 Story E. J. Sec. 826. Code of Tennessee, secs. 4294, 4295.

On the third point.

It is only in case of insolvency that it has ever been held proper for one creditor to sue in behalf of others with himself. But in the present case the insolvency of the St. Louis Mutual Life Insurance Co. was not charged in the Bill. The insolvency and re-insurance appear for the first and only time in the case by the disclosure of the answer of the defendant companies. There is no proof on either of these points. Although a court of chancery may, on the disclosure of insolvency in the answer supported by proof, decree in favor of other creditors with complainant where it is not charged in the Bill, the complainants Bill is never dismissed because it is not filed in behalf of others with himself, where it does not charge insolvency.

Story E. Pl. sec. 100 n 2. Story E Jur. sec. 546 n 2. Halbert *vs.* Halbert, 2 Paige 18–19. Egbert *vs.* Wood, 3 Paige 520.

If insolvency of the company were held essential to complts. relief (which we deny), we may add in this connection that it is settled law in Tennessee that when the Bill fails to charge facts essential to complts. relief, and the answer discloses the existence of those facts, the court will proceed to decree relief to complt.

Rose *vs.* Mynatt, 7 Yr. 31. Maury *vs.* Lewis, 10 Yr. 118.

But if in any aspect of the case the Bill could be regarded as defective in not being filed in behalf of other creditors, such defect would be no ground for dismissing the Bill. 16 Howard 1.

ARGUMENT.

The first point of difference of opinion, is this:

"Whether, during the life-time of complainant, James W. Lovell, any suit is maintainable upon the policy of life insurance set forth in the record in this case."

This statement, it will be observed, is very broad in the use of the words, "any suit." We will not here stop to discuss any question of the jurisdiction of the court, but will only refer the court to the authorities cited on that point in our brief.

The St. Louis court of appeals, in the case of Celsus Price, superintendent of the insurance department of Missouri, against the St. Louis Mutual Life Insurance Co., decided that the transfer of the assets of the company to the Mound City Life Insurance Co. was *ultra vires*, and having reached that conclusion it was made the stepping stone to another conclusion, which we insist was manifestly erroneous. It held in that case that policy holders of the St .Louis Mutual Life Insurance Co. could maintain no suit against the company during the life or term for which the insurance was taken, upon the ground that it did not appear, but that the company would have the ability to discharge its part of the obligation at the end of the life or term, according to the terms of the policy.

It was this decision which misled his honor the circuit Judge. The decision is without reason or authority to support it. The Supreme court of Missouri, in the case of McKee *vs.* The Phœnix Insurance Co., 28 Missouri R sec. 86, held directly the contrary doctrine,

In that case, as in the present one, the insurance was on the life of the husband for the benefit of the wife. Pending the existence of the policy, the *premiums* being all promptly paid and no default, the husband and wife were divorced. The wife proposed to continue to pay the *premiums*, and did so for some time, but the company after awhile refused to receive the premiums on the ground of divorce. Thereupon, during the life-time of the husband, she brought suit on the policy and recovered. The only difficulty with the court seemed to be as to the proper measure of damages in such a case. That precise point, the court say, had not been argued before them, and they did not then determine it; but the court remarked that the mere return of the premiums with interest would not be the standard in all

cases; that in many cases it would be very unjust, especially after the policy had continued for years and the period of existence had consequently been shortened, if the person whose life is insured, though alive, should be laboring under a disease that must speedily result in dissolution. The insurer in such case would not be permitted to escape the payment for which the life was insured by putting an end to the contract of insurance. Now the case at bar is in several particulars a much stronger case than this case of McKee *vs.* Phœnix Insurance Co. In the present case the company not only refused to receive the premiums, but without the knowledge or consent of complainants assumed to sell out the entire assets of the company to another company, arbitrarily requiring complainants to accept re-insurance in this other company. Now, if in the McKee *vs.* Phœnix Insurance Co. case, a mere refusal to accept the *premiums* and continue the policy in force was ground of action pending the life of the husband, how much stronger is the present case when the premiums were not only refused, but the company assumes to place beyond its reach and control all the assets of the company wherewith it might be able to meet its obligations with complainants.

But there is another feature in the present case which adds immensely to its merits. The husband had, since the issuance of the policy, become afflicted with "*hernia*," whereby he was rendered uninsurable in another company. Now in the estimate of the present value of a policy, the cost of re-insurance in another company enters into the estimate. But if he is non-insurable what other estimate in a case like the present, where the company refuse to receive the premium, and have no agent authorized to receive them, can be placed on the present value than to hold the company bound for the $5,000.

But the question certified relates to the right to maintain suit during the life of the person whose life is insured.

In the case of Hochester *vs.* D'Latour, decided by the Queen's Bench in 1853, and reported in 20 vol. English Law and Chancery Reports, p. 157, Lord Chief Justice Campbell, delivering the opinion of the court, reviewed the authorities bearing on the question whether suit could be maintained for a breach of contract before the time of performance had arrived where the promiser *had abandoned* the contract, and the court were unanimously of the opinion that suit was maintainable in such case.

The facts in that case were these:—The defendant had employed the plaintiff to attend and serve him as a courier upon a tour through Europe. But before the time arrived which had been fixed by the contract for the departure, the defendant abandoned the contract, and the plaintiff brought suit for breach of the contract before the day when the service was to have been commenced. His lordship in reviewing all the cases that are usually referred to in discussion of this subject, used the following language, viz:

"If a man promise to marry a woman on a future day, and before that day marries another woman he is instantly liable to an action for breach of promise of marriage. (Short *vs.* Stow.)

"If a man contracts to execute a lease on and from a future day for a certain term, and before that day executes a lease to another for the same term, he may be immediately sued for breaking the contract. [Ford *vs.* Filey, C. B & C. 325].

"So if a man contracts to sell and deliver goods on a future day, and before the day he sells and delivers them to another, he is immediately liable to an action at the suit of the person with whom he first contracted to sell and deliver them. [Bowdell *vs.* Parsons, 10 East R. 359].

"One reason alleged in support of such action is, that the defendant has before the day rendered it impossible to perform the contract at the day; but this does not necessarily follow, for prior to the day fixed for doing the act, the first wife may have died: a surrender of the lease executed might be obtained; and the defendant might have repurchased the goods so as to be in a situation to sell and deliver them to the plaintiff. Another reason may be that where there is a contract to do an act on a future day there is a relation constituted between the parties in the mean time by the contract, and that they impliedly promise taht in the mean time neither will do any thing to the prejudice of the other, inconsistent with that relation. As an example, a man and a woman engaged to marry are affianced to one another during the period between the time of engagement and the celebration of the marriage. In this very case of the traveller and courier, from the day of the hiring till the day when the employment was to begin, they were engaged to each other, and it seems to be a breach of an implied contract if either of them renounces the engagement."

Now let us apply the principles of law here enunciated to the facts of the present case:

The St. Louis Mutual Life Insurance Company issues the policy on the 24 April, 1868. All *premiums* and interest are promptly paid down to and including 24 April, 1873. Complainants were in no default whatever at that date. Very soon thereafter, and before the 24 October, 1873, when the next semi-annual cash *premium* would have been due, the policy gets into the possession of the company for the purpose and in the manner set forth in the foregoing statement, and remains in the possession of the company till after the 24 October had passed.

In the meantime, on October 7, 1873, the company is injoined from transacting business. Nevertheless, at some time after the 24 October, 1873, the policy being in possession of the company, the endorsement hereinbefore mentioned is made on the policy over the signature of one styling himself assignee, commuting the policy to the amount of *premium* money which had been paid, on condition that the interest on the outstanding annual note is paid promptly. This interest was not due till 24 April, 1874.

But before the 24 April, 1874, the company entered into a contract with the Mound City Life Insurance Co. (whose name was changed to The St. Louis Life Insurance Co.), by which the entire assets of the company are sold and transferred to the Mound City Life Insurance Co., *alias* The St. Louis Life Insurance Co.; and the policy holders, including complainants, of the St. Louis Mutual Life Insurance Co. are required by the terms and provisions of this contract, without having obtained their consent thereto, to re-insure in this new company.

After this contract and transfer had been made between these companies, the policy comes again into the hands of complainant. It had not probably been sent to him till after this transaction of sale of assets. He swears that it was not till the summer of 1874 that he received it.

On receiving it, and hearing for the first time of this sale of assets to the Mound City Life Insurance Co., and being told by the agent that the policy was forfeited, he proposed to pay all interest claimed to be due if the policy were re-instated, but was informed that it was impossible, that the company had sold out and quit business.

Now it is difficult to conceive of a clearer case of abandonment of the contract by the performer than this.

But his honor the circuit Judge, following the case of Price *vs.* The St. Louis Mutual Life Insurance Co. before referred to, held that the sale being void it did not appear but that The St Louis Mutual Life Insurance Co. might be able to perform its part of the obligation set forth in the policy after the death of James W. Lovell, and dismissed the Bill as premature.

Now in the case of the marriage contract, and the agreement to lease land, and the agreement to sell goods, mentioned in the opinion of Lord Campbell just quoted, there was a possibility but no probability that the defendant would be able to perform the contract to the day. Now if it were conceded that in the present case it is possible that the St. Louis Mutual Life Insurance Co., may meet its engagement set forth in the policy after the death of James W. Lovell, will not every one concede that the probability that it will be able to do so is as small as in the case of the contracts to marry, lease and sell goods before mentioned.

To speak more pointedly, do not the facts of this case present as clear a case of abandonment as any of those cases, with as little probability of ability to perform to the day? This case may be placed in the class to which those cases belong. But when we compare the present case with the case of the traveller and courier, we see how immensely stronger this case is than that. In that case the suit was brought on the simple abandonment of the contract by the defendant. And the suit was commenced before the time of commencement of the service fixed by the contract had arrived. The case involved no question as to the ability of the defendant to perferm his contract at the time fixed for payment. It was a clear case of abandonment and nothing more, and yet the Court of Queen's Bench held that the action was maintainable.

In the case of McKee *vs.* Phœnix Insurance Co. also, it was a plain case of abandonment and nothing more, no question of ability to pay to the day being involved, and yet the Supreme court of Missouri held the action maintainable.

Other cases adjudged by courts of the highest authority may be found which support the right of suit in the present case. Among them we refer to the case of Planch *vs.* Colburn, 8 Bing.

R. 14. In that case the plaintiff had agreed to write for the defendant a treatise for publication in the defendant's periodical called the Juvenile Library. The plaintiff commenced the composition of the treatise, but before he had completed it and before the time when in the course of conducting the publication it would have appeared in print, the publication was abandoned. The plaintiff thereupon, without completing the treatise, brought an action for breach of the contract. Objection was made that the plaintiff conld not recover on the special contract for want of having completed, tendered and delivered the treatise according to contract. Tindal C. J. said, that the fact was that defendants not only suspended but actually put an end to the Juvenile Library, they had broken the contract with the plaintiff, and recovery was had.

This was a decision of the Common Bench of England. There is one case adjudged by that same high tribunal which is chiefly relied upon in the present case, as holding a doctrine adverse to the array of authorities which we have just referred to. It is the case of King *vs.* The Accumulation Insurance Co., [3. C. B. R. p. 157.] But when that case is carefully examined it will be found to be in accord with them.

The facts of that case were these;—Suit was brought on a life policy, the term of which was twenty years. During the twenty years, the assured being in no default, the company sold the assets to another company with contract of re-insurance of its policy holders in this other company. The assured brought suit on the policy and was non-suited. Four Judges delivered separate opinions, and in each opinion the decission was made to turn chiefly upon the provisions of the deed of settlement of the company. Among other provisions of the deed one of them looked to a dissolution of the company, and stipulated how the company might be dissolved, This provision was specially referred to in each opinion, and the conclusion was that no covenant *could be implied* as against the company in favor of the plaintiff, that the company should preserve the funds to the end of the term. If such covenant *could have been implied* it is clear that the result in that case would have been different.

Now here was a direct recognition of the doctrine enunciated in the case of Hochester *vs.* D'Latour.

In that case, as we have seen, the court said:—"Another reason may be that where there is a contract to do an act on a future day there is a relation constituted between the parties in the meantime by the contract, and that they impliedly promise that in the mean time neither will do anything to the prejudice of the other, inconsistent with that relation."

Now in the several opinions delivered in the case of King *vs.* The Accumulation Insurance Co., it is manifest that this principle was kept constantly in view. But looking to the stipulation of the deed of settlement it was held that no covenant *could be implied* that the company should retain the assets to the end of the term of insurance, and hence plaintiff was non-suited.

Now to apply the principles adjudicated in these several cases just commented on, to the first point of difference of opinion certified, we insist that the present suit is maintainable upon the policy of life insurance set forth in the record.

If we are correct in this conclusion then there will be no difficulty as to the second and third questions certified. As no demurrer to the jurisdiction of the court was interposed, this cause may be considered of either as a suit which might have been brought at law, or as one properly belonging to a court of equity.

[Code of Tennessee, sec. 4321. 1 Daniel Ch. R. 579—80. 4 Johns. Ch. R. 287. 2 Johns. Ch. R. 369.]

If we assume that the second question certified has reference exclusively to a suit in equity then the second question resolves itself into this:—Whether the insolvency of the company, contract of re-insurance, and sale of assets operated to confer on complainants, or either of them, any right to maintain a suit in equity.

This would indeed seem to be a question of easy solution.

That a policy holder could maintain a suit *quia timet* under such circumstances, even though the sale of the assets be regarded as *ultra vires*, there surely can be no doubt. [2 Story, E. J. sec. 826.]

But even if there could be any doubt of complainants right to maintain a suit of that character the right may be placed upon the following sections of the Code of Tennessee, viz:—

"'The creditors of a corporation may also, without having obtained a judgment at law, file a bill in the court of chancery to attach the property of the corporation, and subject the same by sale or otherwise to the satisfaction of their debts, when the corporate franchises are not used or have been granted to others in whole or in part. Sec. 4294.

"In such cases the court may appoint a receiver to take an account of the affairs of the corporation, and apply the property and effects to payment of the debts *pro rata*, and divide the surplus, if any, among the stock-holders. Sec. 4295."

Here we see that *non-user* or grant of franchises to others is all that is necessary to clothe a creditor with right of suit.

Does the statement of the question certified import non-user or sale of franchises? If so, under section 4294, the suit is maintainable.

These sections of the Tennessee Code might also be referred to as determining the first point certified.

Let us consider the third question certified. That question involves the consideration whether the suit can be maintained by complainants apart from other policy holders. It is only in case of insolvency that it has been held proper for one creditor to sue for the benefit of others with himself. But insolvency is not mentioned as essential to the maintenance of suit under sec. 4294. A company may fail to use its franchises when solvent as well as when insolvent. The complainants do not charge the insolvency of the St. Louis Mutual Life Insurance Co. in their Bill. The insolvency of that company appears for the first and only time in this cause in the answer of the company itself. There is no proof on the subject of its insolvency. Although a court of chancery may on the disclosure of insolvency in the answer, supported by proof, decree in favor of other dreditors with complainant, when there is no charge of insolvency in the Bill; the complainants Bill is never dismissed because it is not filed in behalf of others with himself, when it does not charge insolvency.

[Story E. P. sec. 100, n. Egbert *vs.* Wood, 3 Paige, 520. Halbert *vs.* Halbert, 2 Paige, 18. 1 Story, E. J. sec. 546 n. 2.]

But a Bill is never dismissed in a case of this kind for the want of parties. [16 Howard 1.]

If insolvency of the St. Louis Mutual Life Insurance Co. were deemed essential to right of suit in this cause (which we deny), we might refer to the settled adjudications in Tennessee, to the effect that where the Bill fails to charge facts essential to complainants relief, and the answer discloses the existence of those facts, the court will proceed to decree relief to complainants.

[Rose *vs.* Mynatt, 7 Yr. 37. Maury *vs.* Lewis, 10 Yr. 118.]

MONTGOMERY BLAIR,

ANDREW McCLAIN,

Solicitors for Appellants.

111-264

OFFICE SUPREME COURT U.S.
FILED
DEC 15 1882

Supreme Court of the United States.

JAMES W. LOVELL AND WIFE
vs.
THE ST. LOUIS MUTUAL LIFE INSURANCE COMPANY ET AL.

No. 145.

Appeal from Circuit Court of the United States for the Middle District of Tennessee.

Brief of R. McP. Smith, of Counsel for Defendants.

STATEMENT.

On April 24, 1868, James W. Lovell insured his life for the benefit of his wife in the St. Louis Mutual Life Insurance Company. His annual premium was $162.14, of which $53 were to be settled by an annual premium rate, and the residue in semi-annual cash payments of $54.57 each, due on the 24th of April and October. The policy is set forth in the record, folios 16–23.

It contains a provision (folio 18, &c.) that upon default after payment of two annual premiums after the first one—that is, after payment of three annual premiums—the policy should be not forfeited, but commuted to the sum of the payments made; but it is required that the interest upon the outstanding premium note be paid annually in advance, to keep alive the commuted policy.

It is explicitly stated at the end of the policy (folio 21) that agents are "not authorized to grant permits or to make, alter, or discharge contracts, or waive forfeitures." It is added that any waiver by the company will be an act of grace, not to be drawn into precedent.

The assured did not take the trouble to read his policy, (folio 58,) else he could not have entertained the misconception he pretends to have derived from the agent, as to the consequence of default.

His last payment was made on April 24, 1873. Shortly thereafter he told the agent that he wanted to stop paying and take a paid-up policy, and he gave up his policy to be exchanged for the paid-up policy, which he admits he supposed to be such a one as was promised by his policy (folio 59); but he pretends to have misunderstood the nature of this. The policy was forwarded to headquarters, and, after the party's default, (October 24, 1873,) it was returned to him by mail with the proper endorsement, viz., that by such default it was commuted and reduced to a policy for $825, upon condition that the interest on the outstanding premium note were paid annually in advance. The party claims (folio 52) to have paid, in all, $830. The outstanding premium note represents the note portion of the premiums down to the default less any excess of dividends over interest. The first annual payment of interest upon this note was due on April 24, 1874. (Folio 51.)

Before that time—in the latter part of 1873—the company proved insolvent, and was, at the instance of the Insurance Department of Missouri, restrained from doing business. Thereupon the Mound City Life Insurance Company offered, in consideration of a transfer to it of the assets, to reinsure the risks of the insolvent company, and, with the sanction of the Insurance Department and the approval of the court, this arrangement was consummated and the pro-

ceedings dismissed. Shortly afterward the reinsuring company changed its name to that of the St. Louis Life Insurance Company.

Lovell knew nothing of these matters, and he never assented to the re-insurance transaction.

He was seasonably notified to pay the interest upon his outstanding premium note, but he failed to do so. (Folios 54 and 59.)

As a matter of course, the commuted policy was thereby forfeited, unless the party was by this reinsurance transaction relieved from his obligation to the reinsured company.

This effect he contended in the court below was produced by this transaction, whereby, as he insisted, the St. Louis Mutual Life Insurance Company put it out of its power to fulfil its obligations to its policy-holders, by virtually committing suicide.

For the defence it was maintained that this suit in the lifetime of the assured was premature; that the reinsurance transaction, being void, had not operated to alter the relation of the reinsured company to its policy-holders, so as to confer any such right of suit; and that if it had had this effect, no one policy-holder could sue alone, but all must be joined as parties.

The circuit judge ruled for the defence upon these points, but the district judge differing in opinion thereupon, the points of difference were certified and the certificate entered of record, (folios 75–76,) and the case brought here to have these points determined.

Brief.

These points of difference are all that this court has to act upon. (Rev. Stat., sec. 652 and sec. 693; *U. S.* v. *Reese*, 92 U. S., 222, at top; *Dow* v. *Johnson*, 10 Otto, 163–4.)

That the suit, in the lifetime of the assured, is not maintainable—that the void reinsurance transaction gave no right